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5 October, 2006

**Ms. Dora Wai,
Clerk to the Public Accounts Committee,
Legislative Council,
Legislative Council Building,
8 Jackson Road Central,
HONG KONG.**

Dear Ms. Wai,

**The Director of Audit's Report on the
Results of value for money audits (Report No. 46)**

Chapter 1 – Collection of Fines imposed by the Magistrates Courts.

Firstly, my apologies for not meeting your deadline of 30 September – unfortunately, a court case in which I have been involved, overran to this week, and consequently, I was not able to complete my reply in time.

2. I enclose a progress report in respect of this department's implementation of the Audit recommendations.

Yours sincerely,

(John Reading, SC)
Deputy Director of Public Prosecutions

c.c.

Commissioner of Police [Attention Mrs. Kitty Cheng]

Judiciary Administrator [Attention Mr. Augustine Cheng]

Commissioner for Transport [Attention Ms. Lui Ying]

Director of Audit

Secretary for Financial Services and the Treasury [Attention Miss Amy Tse].

Director of Audit's Report No. 46: Chapter 1
Collection of Fines imposed by Magistrates' Courts

**Progress Report to the Public Accounts Committee on the
implementation of the Director of Audits recommendations within the
Department of Justice.**

Background

Court Prosecutors appear before Magistrates to obtain orders [in respect of moving traffic offences] under sections 3A and 3B of the Fixed Penalty (Criminal Proceedings) Ordinance (Cap. 240) ['FPCP Ord.'], and Law Clerks [from the Department of Justice] appear before Magistrates to obtain orders [in respect of parking offences] under section 16 of the Fixed Penalty (Traffic Contraventions) Ordinance, Cap. 237. Should it be necessary, in the event of non-payment of the sums ordered to be paid under sections 3A or 3B, to apply for a distress warrant under section 23 of Cap. 237 then a Law Clerk will appear before the Magistrate to apply for the warrant.

Applying for an order under section 16 of Cap. 237 and sections 3A or 3B of Cap. 240.

2. The role played by our Law Clerks is demand driven in the sense that information in respect of non-payment of fixed penalties for parking offences are received by the department's Fixed Penalty Unit *from the Police*. By this time, a hearing date has already been fixed *by the Court*, and the details of that date will be included in the document¹ received from the Police. The Fixed Penalty Unit will then prepare a form entitled *Application for Court Order*. A Law Clerk from the Fixed Penalty Unit will appear in court at the appointed time to apply for the order.

3. If the fixed penalty relates to a moving traffic offence then the Police, having arranged a hearing date via CASEMAN, will file an application form [Pol. 676] and supporting documents with the Court. Thereafter the

¹ Exparte application for an order to pay the Fixed Penalty together with an additional penalty [Pol. 137].

Senior Court Prosecutor at the Court will receive from the Court, a copy of the Pol. 676, and a Court Prosecutor will be assigned to apply for the order.

Applying for a distress warrant, after non-payment of the penalty and additional penalty.

4. The procedure for applying for a distress warrant for the non-payment of penalties and costs *for parking offences* [see section 23 of Cap. 237] is as set out in paragraph 3.3. of the Report, i.e. upon receipt of information *from the Police* this department will apply for a distress warrant in respect of the non-payment of penalties for parking offences, on the date specified in the information, which has already been fixed by *the Court*, and our Law Clerk will appear to apply for the warrant on that day.

5. As I understand it, although section 10A of Cap. 240 does provide for applications for distress warrants in respect of non-payment of penalties for moving offences, non-payment warrants [rather than distress warrants] are invariably sought in respect of these penalties. This department plays no part in applications for arrest warrants, which are sought *by the Police*, directly from *the Court*.

Court's power to award costs in respect of applications for orders under sections 3A and 3B of the FPCP Ord.

6. Whilst there are *no* dedicated costs provisions in Cap. 240 relevant to orders under section 3A and 3B, prior to the enactment of the Costs in Criminal Cases Ordinance, Cap. 492 ['CCC Ord.'], in 1996, because of the decision of the Court of Appeal *R. v. Chan Yu-nam* [1987] HKLR 805, Magistrates were empowered to awards costs in respect of these orders in accordance with section 69 of the Magistrates Ordinance, Cap. 227. Section 69 was repealed in 1996 with the enactment of the CCC Ord., and the provision which purported to replace section 69, namely, section 11 of the CCC Ord. was in different terms so that the Court of Appeal's interpretation of section 69 was not applicable to the new section [i.e. section 11]. There exists no other provision which provides Magistrates with the power to apply for costs when orders under sections 3A and 3B of the FPCP Ord. are made.

Progress

7. The progress of implementation of the Director of Audit's recommendations, in so far as it effects this department, is detailed on the attached schedule.

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Chapter 1 – Collection of fines imposed by Magistrates’ Courts

(For response by Deputy Director of Public Prosecutions)

	<i>Audit recommendation</i>	<i>Department responsible and its reply</i>	<i>Information to be provided to PAC</i>
Part 2 : Imposition and settlement of fines			
1.	<p><u>Para 2.17 of Audit Report</u></p> <p>The Judiciary Administrator (JA) and the Department of Justice (D of J) should consider ways to enhance performance monitoring and reporting in respect of the collection of fines.</p>	<p><u>Paras 2.18 and 2.19 of Audit Report</u></p> <p>JA agrees with the audit recommendation. The Deputy Director of Public Prosecutions has no objection to the audit recommendation.</p>	<p>The extent to which the DoJ can participate in monitoring the collection of fines is limited by the procedure as detailed in the progress report. The effective role of DoJ staff is to appear in court, when instructions are received from the police, after the time and date have already been fixed by the Court. Similarly, when distress warrants are sought in respect of penalties for non-moving offences, the role of DoJ staff is to appear in Court on the date and at the time specified in the instructions from the police.</p>
Part 3 : Action of overdue fines			
2.	<p><u>Para 3.17(a) of Audit Report</u></p> <p>For parking contraventions, the Department of Justice (D of J) should, in consultation with CP, consider reviewing the existing criteria for application of distress warrants as set out in para 3.4. They are:</p> <p>(a) the ownership of the offending vehicle has been transferred;</p> <p>(b) the vehicle licence of the offending vehicle has expired for two years; or</p> <p>(c) the total amount of outstanding fixed penalty and court cost due from the</p>	<p><u>CP’s letter of 24.5.2006</u></p> <p>(a) after consultation with D of J and Transport Department, the Police proposes that criterion (b) be revised from when “the vehicle licence of the offending vehicle has expired for two years” to “as soon as the vehicle licence expires”; and</p> <p>(b) regarding criterion (c), a review of the existing threshold of \$50,000 will be conducted pending more statistics and information about the impact on the number of warrants if the threshold is to be revised.</p>	<p>These matters have been discussed with the Police, and we will continue to discuss them when it is necessary; however the role played by the DoJ in regard to the matters, is limited. There appears to be no legal impediment in respect of either proposal. It would seem that TD will need to upgrade its computer system in order to be able to accommodate proposal (a), and some computer adjustment, perhaps within the Judiciary, will also be required in respect of proposal (b). Of course, there are cost implications here, which will need to be addressed.</p>

	defaulter has accumulated to over \$50,000.		
3.	<p><u>Para 3.17(b) of Audit Report</u></p> <p>For parking contraventions, D of J should, in consultation with the Commissioner of Police and JA, consider redesigning the process for application of distress warrants in order to avoid multiple applications for distress warrants in respect of the same defaulter in different Magistrates' Courts.</p>	<p><u>Para 3.20 of Audit Report</u></p> <p>The Deputy Director of Public Prosecutions agrees with the audit recommendation in general terms.</p> <p><u>At the hearing</u></p> <p>The Deputy Director of Public Prosecutions said that the matter was being discussed among D of J, the Police and the Judiciary Administration.</p>	<p>This matter has been discussed by relevant departments, and I understand that certain proposals will be put forward by JA, following those discussions. In regard to the limited role played by DoJ in the process, our present compliment of staff will be in a position to deal with any variations in the procedure, whether that involves reducing the number of courts at which warrants are issued, or whether it involves an increase in the number of warrants to be issued, because of a lowering in the present threshold.</p>
Part 6 : Other issues relating to fines arising from moving offences and parking contraventions			
4.	<p><u>Para 6.7 of Audit Report</u></p> <p>D of J should expedite action to introduce the necessary legislative amendments so that court cost can be imposed for moving offence ex parte court orders.</p>	<p><u>Para 6.8 of Audit Report</u></p> <p>The Deputy Director of Public Prosecutions agrees with the audit recommendation in general terms.</p> <p><u>At the hearing</u></p> <p>The Deputy Director of Public Prosecutions said that D of J was in the process of drafting the legislative amendments.</p>	<p>Draft drafting instructions to empower Magistrates to award costs when making orders under section 3A and 3B of Cap. 240, are with the Law Draftsman, and it is anticipated that the proposed legislation will be included in an Omnibus Bill which will be presented to LegCo within the forthcoming session.</p>